

IN HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 6678 (S/S) 2001

(Old No. 16478 of 1993)

Triloki Nath

---Petitioner

Vs.

State of U.P.
And others.

---Respondents.

Hon'ble P.C. Verma. J.

By means of this writ petition, the petitioner has prayed to issue a writ of mandamus directing the respondents to pay salary prescribed for the post of peon to the petitioner as is paid to other regular employees.

Heard Sri P.M.N. Singh, learned counsel for the petitioner and learned Standing Counsel for the respondents.

The petitioner was appointed on temporary basis with effect from 19.08.1982 under the provisions of Dying-in-Harness Rules against class-IV posts and continuously he is being paid salary on that basis. The petitioner was confirmed on the said post In the year 1986, the pay scale was revised but in place of giving regular salary, the petitioner has only given a fixed salary. He was appointed in 1982 and the order has been passed on the ground of G.O. dated 16.05.1981, which provides that the initial appointment shall be made on the fixed pay under the Dying-in-Harness Rules. The Dying-in-Harness Rules have been enforced on the appointments of the dependants of the Govt. Servants who died during their services. Appointment made under the aforesaid Rule is regular in nature as it is made according to the aforesaid Rules framed under proviso of Article 309 of the Constitution of India as held by the Division Bench of Allahabad High Court in Civil Misc. W.P. No. 39127 of 1994 Ravi Karan Singh Vs. State of U.P. and others reported in 1999 (2) Education and Service Cases page- 972.

Since the petitioner was initially appointed on the pay-scale under the Dying-in-Harness Rules, he could not has been put on the fixed pay. The G.P. dated 16.05.1981 is not applicable in the case of the petitioner. As services of t he petitioner have been regularised and

he was a regular employee, therefore, the Government order dated 16.05.1981 is not attracted.

Thus writ of mandamus is issued that respondents shall pay salary prescribed for the post of peon to the petitioner as is paid to other regular employees. The petitioner shall be treated to be regular appointment for class-IV employee and he shall be paid salary regularly every month. The arrears of salary shall be paid, after necessary deduction like Provident Fund within two months from the date of production of certified copy of this order. No order as to costs.

September 29, 2003:
NCM:

(P.C. Verma, J.)